BASE MODEL CONTRACT*

I. Parties and Contract Period

This contract is between **[**_____**]** whose business address is **[**_____**]**, hereinafter referred to as Purchaser and **[**_____**]** whose business address is **[**_____**]**, hereinafter referred to as Provider. This contract is to be effective for the period **[**_____**]**.

The Provider employee responsible for day-to-day administration of this contract will be [enter name and phone number] **[**_____**]** whose business address is **[**_____**]**. In the event that the administrator is unable to administer this contract, Provider will contact Purchaser and designate a new administrator.

The Purchaser employee responsible for day-to-day administration of this contract will be **[**enter name and phone number**] [**_____**]** whose business address is **[**_____**]**. In the event that the administrator is unable to administer this contract, Purchaser will contact Provider and designate a new administrator.

> ***Commentary***: *Although there is no language in s.46.036, Wis. Stats. requiring inclusion of this information in the contract, s.706.02, Wis. Stats., states that contracts are unenforceable unless the parties are identified by their legal names. The remaining information is useful in the administration of a contractual agreement.*
>
> *Providers with multiple service facilities represent a unique situation. In these cases, if the Purchaser makes direct payment to the Central Corporate entity for services at several service sites or facilities, the Central Corporate entity is regarded as the Provider. If, however, payment is made individually to the various service facilities, a separate contract is required for each because each is a Provider.*

II. Services to be Provided

Subject to the terms and conditions set forth in the State/County Contract Covering the Administration of Income Maintenance Programs, Social and Mental Hygiene Services Programs, Community Youth and Family Aids Programs, Child and Spousal Support, Establishment of Paternity Program, and Medical Support Liability. Purchaser agrees to purchase for and Provider agrees to provide to eligible clients the services as described in detail in this contract.

* Applies to contracts with providers entered into by County agencies subject to the terms and conditions set forth in the State/County contract covering the Administration of Income Maintenance Programs, Social and Mental Hygiene Services Programs and the Community Youth and Family Aids Programs.

For all contracts between a County agency administering programs supervised by the Divisions of Economic Support (DES), Community Service s (DCS), and Youth Services (DYS) and a Provider, the services to be provided for agency clients shall be stated. For DCS, services shall be defined as Standard Program Categories/Clusters as reported for the agency clients on the Human Services Reporting System.

The requirements applicable to the delivery of specific employment and training related services authorized by the Family Support Act of 1988 (PL 100-485) and s.49.50(7)et. seq. of the Wisconsin Statutes are included in an addendum to this contract.

III. Payment for Services

Purchaser and Provider agree:

A. The total amount to be paid to Provider by Purchaser for services provided in accordance with this Contract shall not exceed the contracted dollar amount of $_____. The Provider agrees that the total cost for service provided and the rate (per hour, day, month, year) and the number of clients served will be:

Service	Rate*	Unit**	# of Clients Served	Total Cost

* Define rate (example: dollars/per unit; time/per client)
** Specify hour, day, month, year

B. Provider shall return to Purchaser funds paid in excess of the allowable cost of services provided. If the Provider fails to return funds paid in excess of the allowable cost of standard programs categories/clusters provided, Purchaser shall recover from Provider any money paid in excess of the allowable costs from subsequent payments made to the Provider. The allowable cost of standard programs shall be determined pursuant to the Department of Health and Social Services' *Allowable Costs Policy Manual*.

C. If the Provider requests an advance payment in excess of $10,000, the Provider agrees to supply a Surety Bond per s.46.036(3)(f), Wis. Stats. The Surety Bond must be for an amount equal to the amount of the advance payment applied for. The advance payment may be up to one-twelfth (1/12) of an annual contract. If the contract period is for less than twelve months, the contract amount may be adjusted in amounts no greater than the amount determined by dividing the contract amount by the number of months in the contract period.

Commentary: *Special provisions relating to funding availability and limitations, and invoicing and payment procedure s applicable to the JOBS program are detailed in an addendum to this contract.*

Section S.46.036(3)(a) and (b), Wis. Stats., states that payments made by the Purchaser to the Provider must be made on the basis of either actual allowable costs or a unit rate per client service multiplied by the actual client service furnished each month. All contracts for client services must show:

1. *The total dollar amount to be purchased.*

2. *For each service:*

    a. *the number of clients to be served;*
    b. *the number of units of service;*
    c. *the unit rate per client service; and,*
    d. *the total dollar amount.*

3. *For equipment purchases specify:*
    a. *method of payment; and,*
    b. *ownership of the equipment at termination of the contract.*

The total amount to be paid to the Provider is an absolute ceiling unless the contract is renegotiated.

The method of recovery by the Purchaser, Part B meets the requirements of s.46.036(3)(f), Wis. Stats.

Under Part C, the cost of the Surety Bond shall b e allowable as an expense per s.46.036(3)(f), Wis. Stats.

A surety, in a broad sense, is one who is liable for the debt or obligation of another. In order to receive advance payment in excess of $10,000, the Provider is required to buy a Surety Bond, usually from a Surety and Fiduciary Bonding Company. The bond is usually secured by a mortgage to some property of Provider. If the provider fails in its obligations to provide services covered by the advance payment, the party issuing the bond (e.g., the bonding company) will reimburse the Purchaser for the amount of the bond.

A surety is not required if the provider is a state agency.

The total amount to be paid to the Provider is an absolute ceiling unless the Contract is renegotiated. However, s.46.036(5m)(a) and (e) allows group homes, CBRF's, and certain inpatient alcohol and other drug abuse treatment programs to retain excess revenue under certain conditions. Also, Child Caring Institutions are able to retain excess revenue under the Department's Allowable Cost Policy.

IV. Billing and Collection Procedures

A. The Provider shall charge a uniform schedule of fees as defined in s.46.03(18), Wis. Stats., unless waived by the Purchaser with written approval of the Department of Health and Social Services.

B. Fees collected on behalf of a client from any source will be treated as an adjustment to the costs and will be deducted from the amount paid under this contract.

C. The billing and collection effort of the Provider may be limited at the discretion of the Provider to the submission of not more than two statements of the client's responsible party or the processing of their third party payment claim forms. Although the Provider may, at its discretion, use more extensive billing and collection procedures, Provider shall not be obligated to institute suit to collect sums due, nor to undertake any other collection procedure with respect to third party payment sources or the client. The procedures used by the Provider shall comply with the provisions of Wisconsin Administrative Code HSS 1.01-1.06.

Commentary: *Parts A & B are required by s.46.036(4)(e), Wis. Stats., Wisconsin Administrative Code HSS 1.01 to 1.06 prescribes collection and billing procedures.*

Part C of this section implements 46.036(4)(e), Wis. Stats .

NOTE: To the extent that these provisions are applicable to contracts for services authorized by the Family Support Act of 1988, it will be so stated in the addendum to this contract.

V. Eligibility Standards for Recipients of Services

Provider and Purchaser understand and agree that the eligibility of individuals to receive the services to be purchased under this Agreement from Provider will be determined by Purchaser. An individual is entitled to the right of an administrative hearing concerning eligibility and the Provider shall inform individuals of this right.

Commentary: *It is recommended that the Provider give clients a written statement of their rights to a fair hearing per Chapter 68.*

VI. Indemnity and Insurance

A. Provider agrees that it will at all times during the existence of this Contract indemnify Purchaser against any and all loss, damages, and costs or expenses which Purchaser may sustain, incur, or be required to pay by reason of any eligible client's suffering, personal injury, death or property loss resulting from participating in or receiving the care and services to be furnished by the Provider under this Agreement; however, the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by Purchaser.

B. Provider agrees that, in order to protect itself as well as Purchaser under the indemnity provision set forth in the above paragraph, Provider will at all times during the terms of this Contract keep in force a liability insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Department. Upon the execution of this Contract,

Provider will furnish Purchaser with written verification of the existence of such insurance. In the event of any action, suit, or proceedings against Purchaser upon any matter herein indemnified against, Purchaser shall, within five working days, cause notice in writing thereof to be given to Provider by certified mail, addressed to its post office address.

***Commentary**: It is highly advisable to the Provider to keep in force a liability insurance policy. The Purchaser is responsible for ensuring adequate liability coverage for itself and clients.*

VII. Affirmative Action/Civil Rights Compliance

A. The Provider agrees to submit to the Purchaser a current copy of the Subrecipient Civil Rights Compliance Action plan for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and the Americans with Disabilities Act (ADA) of 1990. The Provider shall attach its individual CRC Action Plan as part of this contract. If an approved plan has been received during the previous calendar year, a plan update is acceptable. The plan may cover a 2 year period.

***Commentary**: This language reflects the requirements established for subrecipients of federal funds to comply with federal and state laws and regulations. Also note that if the provider has less than 10 employees and/or receives a county agency contract of less than $10,000, the county can replace "Action Plan" in the language above with "Assurances." A provider with fewer than 10 employees but with a county agency contract exceeding $10,000 must be required to submit at least an "Assurance" but may, at the county's discretion, be required to submit an "Action Plan."*

If the county needs further clarification, please consult either the designated DHSS AA/CRC liaison or the County's copy of "The Civil Rights Compliance Standards and Resource Manual for Equal Opportunity in Service Delivery and Employment for the Wisconsin Department of Health and Social Services, its Service Providers and their Subcontractors." (October 1992 Edition.)

B. The Provider agrees to the following provisions:

1. No otherwise qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, religion, sex, disability or age. This policy covers eligibility for and access to service delivery, and treatment in all programs and activities.

   ***Commentary:** This language reflects Equal Opportunity requirements established by federal civil rights legislation and regulations.*

2. No otherwise qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subject to discrimination in

employment in any manner or term of employment on the basis of age, race, religion, color, sex, national origin, or ancestry, handicap (as defined in Section 504 and the Americans with Disabilities Act (ADA), physical condition, developmental disability (as defined in s.51.05(5)), arrest or conviction record (in keeping with s.111.32) sexual orientation, marital status, or military participation. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.

Commentary: *This language reflects equal employment opportunity requirements established by the Wisconsin Fair Employment Act and Federal civil rights legislation and regulations.*

3. The Provider shall post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be according to Purchaser's policies and procedures and made available in languages and formats understandable to applicants, clients and employees.

4. The Provider agrees to comply with the Purchaser's civil rights compliance policies and procedures.

Commentary: *This provision is designed to ensure that the provider clearly understands the obligation to comply with established policies and procedures. As a resource to assist counties in developing civil rights compliance guidelines, the Department has provided each county with "The Civil Rights Compliance Standards and Resource Manual for Equal Opportunity in Service Delivery and Employment for the Wisconsin Department of Health and Social Services, its Service Providers and their Subcontractors." (October 1992 Edition.)*

5. The Provider agrees that through its normal selection of staff, it will employ staff with special translation or sign language skills or find persons who are available within a reasonable time and who can communicate with non-English speaking or hearing impaired clients; train staff in human relations techniques, sensitivity to persons with disabilities and sensitivity to cultural characteristics; and make programs and facilities accessible, as appropriate, through outstations, authorized representatives, adjusted work hours, ramps, doorways, elevators, or ground floor rooms, and braille, large print or taped information for the visually impaired. Informational material s will be posted and/or available in languages and formats appropriate to the needs of the client population.

Commentary: *These are not new expectations. Language has been updated to clarify existing U.S. DHHS requirements for implementation of Title VI and Section 504 of the Rehabilitation Act, and to include requirements of the Americans with Disabilities Act.*

C. The Purchaser will take constructive steps to ensure compliance of the Provider with the provisions of this subsection. The Provider agrees to comply with Civil Rights monitoring reviews performed by the Purchaser, including the examination of records and relevant files maintained by the Provider. The Provider further

agrees to cooperate with the Purchaser in developing, implementing, and monitoring corrective actions plans that result from any reviews.

VIII. Renegotiation

This contract or any part thereof must be renegotiated in the case of 1) increased or decreased volume of services; 2) changes required by federal or state laws or regulations or court action; or, 3) monies available affecting the substance of this Agreement.

Commentary: *Under s.46.036(3)(b), Wis. Stats., the Purchaser shall determine actual marginal costs for each unit of service less than or in addition to the contracted number. This section should be contained in all contracts to ensure that both parties are covered if the actual units of service vary from the contracted number. The Contract is renegotiated by the Purchaser "under conditions set forth in the contract." In this section, the conditions for renegotiation must be clearly specified. This is of particular importance under audit requirements of the DHSS.*

Payments cannot vary from the contracted amount unless renegotiated as specified in the contract. Under all circumstances, the payment for services must conform to all rules and policies. (For revision and termination procedures see Section XIII.)

The State/County contract specifies the date by which the county can claim state reimbursement for calendar year costs. Renegotiation of vendor contracts must be completed by this date.

IX. Contract Revisions and/or Terminations

A. Failure to comply with any part of this contract may be considered cause for revision, suspension, or termination.

B. Revisions of this contract must be agreed to by Purchaser and Provider by an addendum signed by the authorized representatives of both parties.

C. Provider shall notify Purchaser whenever it is unable to provide the required quality or quantity of services. Upon such notification, Purchaser and Provider shall determine whether such inability will require a revision or cancellation of this contract.

D. If Purchaser finds it necessary to terminate the contract prior to the contract expiration date for reasons other than non-performance by the Provider, actual costs incurred by the Provider may be reimbursed for an amount determined by mutual agreement of both parties.

E. This contract can be terminated by a 30-day written notice by either party.

Commentary: *Parts A-C and E are standard contract language. Part D of this section allows the parties to negotiate reimbursements of actual cost when the Purchaser terminates the contract for reasons other than non-performance s.46.036(3)(e), Wis. Stats.*

If the cancellation of the contract by either party results in the closing of a CBRF, both parties have certain statutory obligations. Wis. Stats. 50.03(14)(l) governs the closing of a Community Based Residential Facility (CBRF). It states that, upon DHSS approval of the facility's plan to relocate its residents (or the imposition of such a plan by the DHSS), the facility must establish a closing date not earlier than 90 days from the date of DHSS approval or imposition of the relocation plan when 5 to 50 residents will be relocated. This same statute also requires a minimum 120 day period when more than 50 residents will be relocated.

In addition, Wis. Stats. 50.03(14)(b) mandates that county agencies of the county in which the facility is located shall participate in the development and implementation of individual relocation plans. It also requires that agencies of other counties which have responsibility for facility residents shall participate in the development and implementation of individual relocation plans for those residents. Therefore, county agencies clearly have a responsibility to be actively involved in resident relocation when a CBRF is closing. To date, the DHSS experience with county agencies in this respect has been very positive.

X. Resolution of Disputes

The Provider may appeal decisions of the Purchaser in accordance with the terms and conditions of the contract and Chapter 68, Wis. Stats.

Commentary: *This section meets the requirements of s.46.037(7), Wis. Stats. If agreeable to both parties, a written procedure for settling disputes can be substituted for the above wording.*

Provisions for the settlement of disputes which may arise during the execution of contracts for services authorized by the Family Support Act of 1988 are included in an addendum to this contract.

XI. Records

A. Provider shall maintain such records and financial statements as required by state and Federal laws, rules, and regulations.

B. Provider will allow inspection of records and programs, insofar as it is permitted by state and federal laws, by representatives of the Purchaser, the Department of Health and Social Services and its authorized agents, and Federal agencies, in order to confirm Provider's compliance with the specifications of this contract.

C. The use or disclosure by any party of any information concerning eligible clients who receive services from Provider for any purpose not connected with the administration of Provider's or Purchaser's responsibilities under this contract is prohibited except with the informed, written consent of the eligible client or the client's legal guardian.

Commentary: *Part A meets the requirements of s.46.036(4)(a), Wis. Stats.*

Part B meets the accountability requirements of s.46.036, Wis. Stats.

Part C meets the confidentiality requirements of s.49.53, s.48.78, s.51.30 s.51.45(14) and s.55.06(17), Wis. Stats.

For 51 agency contracts for alcohol and other drug abuse programs only:

A general legal opinion interpreting how the federal AODA confidentiality regulations apply to Wisconsin's 51 Board system indicates that Boards may share client identifying information with a contract agency without client consent only if the Board and the contract agency enter into a qualified service organization agreement. (Federal Register, Vol. 41, No. 127, Part IV, Title 42, Subchapter A. Part 2. "Confidentiality of Alcohol and Drug Abuse Patient Records," Section 2.11(n). The qualified service organization agreement language could be added to this section of the contract or as a supplement to the contract.

XII. Reporting

Provider shall comply with the reporting requirements of Purchaser.

Commentary: *This section is required by s. 46.036, Wis. Stats.*

Additional reporting provisions applicable to contracts for services authorized by the Family Support Act of 1988 are included in an addendum to this contract.

XIII. Provider Responsibilities

Provider agrees to meet state and federal service standards and applicable state licensure and certification requirements as expressed by state and federal rules and regulations applicable to the services covered by this contractual agreement. In addition, Provider shall:

A. Cooperate with the Purchaser in establishing costs for reimbursement purposes. *[Refer to Number 1 in the commentary following this section.]*

B. ***Commentary:*** *Subsection XIII.B originally included audit language. We moved the audit language to Section XVI, where we incorporated the suggested audit language released by memo in 1999.*

C. Maintain a uniform double entry accounting system and a management information system compatible with cost accounting and control systems. (See DHSS *Allowable Costs Policy Manual*.) *[Refer to number 2 in the commentary following this section. Refer to section VI of instructions for exceptions on small residential providers.]*

D. Transfer a client from one category of care or service to another only with the approval of the Purchaser. *[Refer to number 3 in the commentary following this section.]*

E. If the Provider obtains services for any part of this Agreement from another vendor, the Provider is responsible for fulfillment of the terms of the contract and shall give prior written notification of such to the Purchaser for approval.

Commentary:

1. This is a requirement of s.46.036(4)(b), Wis. Stats.
2. This is a requirement of s.46.036(4)(a), Wis. Stats.
3. This is a requirement of s.46.036(4)(d), Wis. Stats.

It is DCS policy that no audit is required of Adult Family Homes under contract to county agencies when the sole reason for the audit is the result of a change made in a county's payment system, made in order to permit the sponsor to take advantage of the tax exclusion under Section 131 of the Internal Revenue Code and S.71.09 (7)(a)6 Wis. Stats.

Additional provider responsibilities applicable to contracts for services authorized by the Family Support Act of 1988 are included in the JOBS addendum to this contract.

XIV. Conditions of the Parties Obligations

A. This contract is contingent upon authorization of Wisconsin and United States laws and any material amendment or repeal of the same affecting relevant funding or authority of the Department of Health and Social Service s shall serve to terminate this Agreement, except as further agreed to by the parties hereto.

B. Nothing contained in this contract shall be construed to supersede the lawful powers or duties of either party.

C. The Purchaser shall insure that the Provider meets applicable state certification and licensure requirements.

D. It is understood and agreed that the entire contract between the parties is contained herein, except for those matters incorporated herein by reference, and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

E. Purchaser shall be notified in writing of all complaints filed in writing against the provider. Purchaser shall inform the Provider in writing with their understanding of the resolution of the complaint.

F. Purchaser shall receive from the Provider a copy of the most recent licensing or certification report concerning the provider.

Commentary: *This section is standard contract language.*

The licensing or certification status of a provider may be obtained through the DCS Regional Office, Regulation and Licensing Section, for the following programs: Child Day Care, Community Based Residential Facilities (CBRF's),

Child Care Institutions (CCI's), Group Foster Homes, Child Placing Agencies, Shelter Care and Adult Day Care. For the certification status of alcohol and day treatment facilities and mental health treatment facilities, contact the Office of Program Certification, Bureau of Program Quality Assurance, DCS, Madison.

XV. Access to Agency Records

The agency shall permit appropriate representatives of the Grantor to have timely access to the agency's records and financial statements as necessary to review Grantee's compliance with contract requirements for the use of the funding.

Commentary: *This section was added to the model contract through a memo released in 1999.*

XVI. Audit Requirements

Commentary: *The granting agency has four options for audit under s. 46.036 and the 1999 revision to the Provider Agency Audit Guide: waive the audit, hire an auditor to perform agreed-upon procedures, require the provider to have a program audit, or require the provider to have an agency-wide audit. If the contract specifies an audit, but not whether the audit should be a program audit or an agency-wide audit, the provider should have an agency-wide audit, unless it obtains the granting agency's approval for a program audit. (This section was added to the model contract through a memo released in 1999.)*

- ***Situation #1:*** *One of the more common situations is likely to be that the granting agency has decided to require that a program audit is the minimum audit needed to meet its monitoring needs, i.e. the provider may have either a program or agency-wide audit. If this is the case, the contract language to be used is:*

1. The Grantee shall submit an annual program or agency-wide audit to the Grantor if the total amount of annual funding provided by the Grantor through this and other contracts is $25,000 or more.

   Commentary: *Under this option, since the minimum type of audit is a program audit, the agency can meet this requirement by having either a program audit or agency-wide audit. An agency may prefer to have an agency-wide audit because an agency-wide audit is more efficient, other granting agencies are requiring an agency-wide audit, or it considers an agency-wide audit to be good business practice. A program's fair share of the cost of an agency-wide audit is an allowable cost for reimbursement from the program when a program audit is the minimum type of audit needed.*

2. The audit shall be in accordance with the requirements of OMB Circular A-133 if the provider meets the criteria of that Circular for needing an audit in accordance with that Circular. The audit shall also be in accordance with:

   - The *State Single Audit Guidelines*, if the provider is a local government that meets the criteria of OMB Circular A-133 for needing an audit in accordance with that Circular or

- The *Provider Agency Audit Guide*, 1999 revision, for all other providers.

  Commentary: *The department does not authorize Grantors to waive the requirements of OMB Circular A-133. So, if A-133 is applicable by federal policy, the provider must have an A-133 audit. In addition, the department does not authorize Grantors to require A-133 when A-133 would not be applicable by federal policy unless the Grantor has obtained prior approval from the department.*

3. Source of funding: This contract is funded by…

   Commentary: *The Grantor must provide the Grantee with information on the source of funding so that the Grantee's auditor can properly plan and perform the audit. Funding information needed for audit purposes includes the name of the program, the federal agency where the program originated, the CFDA number, and the percentages of federal, state, and local funds constituting this grant of financial assistance. In many cases, this information can be derived from the department's listings of CARS and Non-CARS program funding sources, which are online at http://www.dhfs.state.wi.us/bfs/CARS/index.htm.*

4. Reporting Package: The Grantee shall submit to the Grantor a reporting package that includes: (a) all audit schedules and reports required for the type of audit applicable to the agency; (b) a summary schedule of prior year findings and the status of addressing these findings; (c) a Management Letter (or similar document conveying auditor's comments issued as a result of the audit); and (d) management responses/corrective action plan for each audit issue identified in the audit.

5. Additional supplemental schedule: In addition to the supplemental schedules listed under #3, the reporting package shall include a supplemental schedule showing revenue and expenses for this contract.

   Commentary: *The additional supplementary schedule is optional. Some counties need audited contract information to settle their contracts with providers. However, additional supplemental schedules add audit cost, and they should be required only if:*

   1) The granting agency has determined that the information in the Schedule of Federal and State Awards (program and agency-wide audits) and the Statement of Functional Revenue and Expenses (agency-wide audits only) does not meet its information needs.

   2) *The granting agency's program pays the incremental cost of the additional schedule.*

6. Submitting the Reporting Package: The Grantee shall submit the required reporting package to the Grantor within 180 days of the end of the Grantee's fiscal year.

7. Access to auditor's workpapers: When contracting with an audit firm, the Grantee shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Grantor. Such access shall include the right to obtain copies of the workpapers and computer disks, or other electronic media, upon which records/ working papers are stored.

8. Failure to comply with the requirements of this section: In the event that the Grantee fails to have an appropriate audit performed or fails to provide a complete audit report to the Grantor within the specified timeframes, the Grantor may:

   a. Conduct an audit or arrange for an independent audit of the Grantee and charge the cost of completing the audit to the Grantee;

   b. Charge the Grantee for all loss of Federal or State aid or for penalties assessed to the Grantor because the Grantee did not submit a complete audit report within the required time frame;

   c. Disallow the cost of audits that do not meet these standards; and/or

   d. Withhold payment, cancel the contract, or take other actions deemed by the Grantor to be necessary to protect the Grantor's interests.

- ***Situation #2****: If the granting agency has decided to require an agency-wide audit, the contract language to be used is:*

  1. The Grantee shall submit an annual agency-wide audit to the Grantor if the total amount of annual funding provided by the Grantor through this and other contracts is $25,000 or more.

     Commentary: Paragraphs 2 through 8 are the same as those for "Situation #1," which is the program audit.

- ***Situation #3:*** *If the granting agency has decided to hire an auditor to perform an agreed-upon procedures engagement, the contract language to be used is.*

  The Grantor will arrange and pay for an agreed-upon procedures engagement that will meet the audit requirements of s. 46.036 for this contract. This provision does not absolve the Grantee from needing to meet any federal audit requirements that may be applicable or any audit requirements of other contracts.

  Commentary: *Under the agreed-upon procedures option, the grantor is making all of the audit arrangements, so paragraphs 2 through 8 are not needed.*

- ***Situation #4****: If the granting agency has decided to waive the audit and rely just on other monitoring efforts, the contract language to be used is:.*

  The Grantor has waived the audit requirement under s. 46.036 for this contract. This

provision does not absolve the Grantee from needing to meet any federal audit requirements that may be applicable or any audit requirements of other contracts.

Commentary: *Under the waived audit option, there is no audit, so paragraphs 2 through 8 are not needed.*

XVII. Health Insurance Portability and Accountability Act of 1996 "HIPAA" Applicability.

A. The Provider agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the services the Provider provides or purchases with funds provided under this contract. *[include this paragraph in all contracts*]

B. In addition, certain functions included in this agreement may be covered within HIPAA rules. As such the Purchaser must comply with all provisions of the law and has determined that Provider is a "Business Associate" within the context of the law. As a result, the Purchaser requires Provider to sign and return with this contract the Business Associate Agreement, which will be included and made part of this agreement. *[include this paragraph and attach the Agreement if the purchaser determines that the provider is a business associate]*

XVIII. Signatures

A. This contract is agreed upon and approved by the authorized representative s of _____ and _____ as indicated below.

B. This contract become s null and void if the time between the purchaser's authorized representative signature and the provider's authorized representative signature on this contract exceeds sixty days.

For Purchaser:

[Typed Name]_____ Date

[Title] _____

[Typed Name] _____ Date

[Title] _____

For Provider:

[Typed Name] _____ Date

[Title] _____

[Typed Name] _____ Date

[Title] _____

Commentary:

Either an individual provider or a provider's authorize d representative must sign the contract. If the application of this general role is unclear in a particular case, the purchasing agency will need to seek advice from its legal counsel .

BUSINESS ASSOCIATE AGREEMENT

As required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")

This Agreement ("Agreement") amends and is hereby incorporated into the existing agreement known as _____(Name of Contract) "Agreement", entered into by and between _____herein after referred to as "(Provider)" and _____ herein after referred to as "(Purchaser)" on _____(Date).

This Agreement is specific to those Services and Programs included in the Agreement where it has been concluded that the (Provider) is performing specific functions on behalf of (Purchaser) that have been determined to be covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

[(Provider) functions or activities within this agreement may include, but are not limited to the following: (i) claims processing or administration,, (ii) data analysis, processing or administration, (iii) utilization review, (iv) quality assurance, (v) billing, (vi) benefit management, (vii) practice management, or (viii) repricing]

The (Purchaser) and (Provider) mutually agree to modify the Agreement to incorporate the terms of this Agreement to comply with the requirements of HIPAA's implementing regulations, Title 45, Parts 160 and 164 of the Code of Federal Regulations ("Privacy Rule"), dealing with the confidentiality of health or health-related information, and Title 45, Part 142 of the Code of Federal Regulations ("Security Rule"), dealing with the standards for the security of individual health information that is electronically maintained or transmitted, and Title 45, Part 162 of the Code of Federal Regulations ("Transaction Rule") dealing with standards for electronic transactions. If any conflict exists between the terms of the original Agreement and this Agreement, the terms of this Agreement shall govern.

1. Definitions:
    a. Protected Health Information (PHI) means any information, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental condition of any Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and (ii) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.
    b. Individual means the person who is the subject of PHI, and shall include a person who qualifies under the Privacy Rule as a personal representative of the Individual.
    c. Capitalized terms used in this Agreement, but not otherwise defined shall have the same meaning as those terms in the HIPAA Rules.

2. Prohibition on Unauthorized Use or Disclosure of PHI: (Provider) shall not use or disclose any PHI it creates or receives on behalf of the (Purchaser) except as permitted or required by the Agreement or this Agreement, as permitted or required by law, or as otherwise authorized in writing by the (Purchaser).

3. Use and Disclosure of Protected Health Information: (Provider) may use or disclose PHI only for the following purpose(s):

    a. for the proper management and administration of named function or activity and provision of healthcare services within the named function or activity or,
    b. for meeting its obligations as set forth in any agreements between the parties evidencing their business relationship, or
    c. as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by The (Purchaser) or as required by applicable law, rule or regulation, or,
    d. for Data Aggregation purposes for the Health Care Operations of the (Purchaser). [45 CFR §164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)] or,
    e. for use in (Provider) operations as outlined in paragraph 4 below.

4. Use of PHI for Use in (Provider's) Operations: (Provider) may use and/or disclose PHI it creates or receives on behalf of the (Purchaser) to the extent necessary for (Provider's) proper management and administration, or to carry out (Provider's) legal responsibilities, only if:

    a. The disclosure is permitted or required by law; or
    b. (Provider) obtains reasonable assurances, evidenced by written contract, from any person or organization to which (Provider) shall disclose such PHI that such person or organization shall:

        (i) hold such PHI in confidence and use or further disclose it only for the purpose for which (Provider) disclosed it to the person or organization, or as required by law: and
        (ii) notify (Provider) who shall in turn promptly notify the (Purchaser), of any instance which the person or organization becomes aware of in which the confidentiality of such PHI was breached.

5. Safeguarding and Maintenance of PHI: For all PHI it creates or receives from or receives on behalf of the (Purchaser), (Provider) shall develop, implement, maintain, and use:

    a. appropriate administrative, technical, and physical safeguards to prevent the improper use or disclosure of all PHI, in any form or media: and,
    b. appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted PHI.

    (Provider) shall document and keep these safeguards and security measures current and available for inspection, upon request. (Provider's) security measures must be consistent with HIPAA's Security regulations, Title 45, Part 142 of the

Code of Federal Regulations ("Security Rule"), once these regulations are effective.

6. Subcontractors and Agents: (Provider) agrees to ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by the (Provider) on behalf of the (Purchaser), agree to the same restrictions and conditions that apply to the (Provider) with respect to such information. This provision does not apply to the use or disclosure of PHI for Treatment by subcontractors who are providers of Health care within the named function or activity.

7. Compliance with Electronic Transactions and Code Set Standards: If (Provider) conducts any Standard Transaction as defined in 45 CFR §164.504 on behalf of the (Purchaser) within the named programs, (Provider) shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulations. (Provider) shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of the (Purchaser) that:

   a. changes the definition, data condition, or use of a data element or segment in a standard Implementation Specification; or
   b. adds any data elements or segments to the Maximum Defined Data Set; or
   c. uses any code or data elements that are either marked "not used" in the standard's Implementation Specification(s) or are not in the standard's Implementation Specifications(s); or
   d. changes the meaning or intent of the standard's Implementations Specification(s).

   (Provider) agrees to comply with all provisions of the HIPAA Standards for Electronic Transactions rules regarding additional requirements for health plans [if it is determined that the (Purchaser) is a Health Plan] as set forth in CFR §162.925 as follows:

      a. General rules.

         (i) if an entity requests the (Provider) to conduct a Transaction as a standard Transaction, the (Provider) must do so.
         (ii) the (Provider) may not delay or reject a Transaction, or attempt to adversely affect the other entity or the Transaction, because the Transaction is a standard Transaction.
         (iii) the (Provider) may not reject a standard Transaction on the basis that it contains data elements not needed or used by the (Provider) (for example, coordination of benefits information).
         (iv) the (Provider) may not offer an incentive for a health care provider to conduct a Transaction covered by this part as a Transaction described under the exception provided for in CFR 45 §162.923(b).
         (v) the (Provider) that operates as a health care clearinghouse, or requires an entity to use a health care clearinghouse to receive, process, or transmit a standard Transaction may not charge fees or

costs in excess of the fees or costs for normal telecommunications that the entity incurs when it directly transmits, or receives, a standard transaction to, or from, the (Provider).

b. Coordination of benefits. If the (Provider) receives a standard Transaction and coordinates benefits with another Health Plan (or another payer), it must store the coordination of benefits data it needs to forward the standard Transaction to the other Health Plan (or other payer).

c. Code sets. The (Provider) must meet each of the following requirements:

(i) Accept and promptly process any standard Transaction that contains codes that are valid, as provided in subpart within this part.
(ii) Keep code sets for the current billing period and appeals periods still open to processing under the terms of the health plan's coverage.

(The following paragraph may be replaced by one that states "(Provider) must be compliant with electronic Transactions and code set standards no later than October 16, 2002" if the (Purchaser) or (Provider) did not file an extension.)

As set forth in CFR 45 §162.900(b)(1)(2) and the Administrative Simplification Compliance Act (ASCA) and consistent with the (Purchaser's) extension filing, the (Provider) must be compliant with electronic Transactions and code set standards no later than October 16, 2003.

8. Access to PHI: At the direction of the (Purchaser), (Provider) agrees to provide access to any PHII held by (Provider) which the (Purchaser) has determined to be part of the (Purchaser's) Designated Record Set, in the time and manner designated by the (Purchaser). This access will be provided to the (Purchaser) or, as directed by the (Purchaser), to an Individual, in order to meet the requirements under the Privacy Rule.

9. Amendment or Correction to PHI: At the direction of the (Purchaser), (Provider) agrees to amend or correct PHI held by (Provider) and which the (Purchaser) has determined to be part of the (Purchaser's) Designated Record Set, in the time and manner designated by the (Purchaser).

10. Reporting of Unauthorized Disclosures or Misuse of PHI: (Provider) shall report to the (Purchaser) any use or disclosure of PHI not authorized by this Agreement or in writing by the (Purchaser). (Provider) shall make the report to the (Purchaser's) Privacy Official not less than one (1) business day after (Provider) learns of such use or disclosure. (Provider's) report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the PHI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what (Provider) has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action (Provider) has taken or shall take to prevent future similar unauthorized use or disclosure. (Provider) shall provide such other information, including a written report, as reasonably requested by the (Purchaser's) Privacy Official, or his or her designee.

11. Mitigating Effect of Unauthorized Disclosures or Misuse of PHI. (Provider) agrees to mitigate, to the extent practicable, any harmful effect that is known to (Provider) of a misuse or unauthorized disclosure of PHI by (Provider) in violation of the requirements of this Agreement.

12. Tracking and Accounting of Disclosures: So that the (Purchaser) may meet its accounting obligations under the Privacy Rule, (Provider) agrees to the following:

    a. Disclosure Tracking. Starting April 14, 2003, for each disclosure not excepted under subsection (b) below, (Provider) will record for each disclosure of PHI it makes to the (Purchaser) or a third party of PHI that (Provider) creates or receives for or from the (Purchaser) (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom (Provider) made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure. For repetitive disclosures which (Provider) makes to the same person or entity, including the (Purchaser), for a single purpose, (Provider) may provide (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures, and (iii) the date of the last of these repetitive disclosures. (Provider) will make this log of disclosure information available to the (Purchaser) within five (5) business days of the (Purchaser's) request.

    b. Exceptions from Disclosure Tracking. (Provider) need not record disclosure information or otherwise account for disclosures of PHI that meet each of the following conditions:

        (i) the disclosures are permitted under this Agreement, or are expressly authorized by the (Purchaser) in another writing; and,
        (ii) the disclosure is for one of the following purposes:
            1. the (Purchaser's) Treatment, Payment, or Health Care Operations;
            2. in response to a request from the Individual who is the subject of the disclosed PHI, or to that Individual's Personal Representative;
            3. made to persons involved in that individual's health care or payment for health care;
            4. for notification for disaster relief purposes;
            5. for national security or intelligence purposes; or,
            6. to law enforcement officials or correctional institutions regarding inmates.

    c. Disclosure Tracking Time Periods. (Provider) must have available for the (Purchaser) the disclosure information required by this section for the six-year period preceding the (Purchaser's) request for the disclosure information (except (Provider) need have no disclosure information for disclosures occurring before April 14, 2003).

13. Accounting to the (Purchaser) and to Government Agencies. (Provider) shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or on behalf of, or created for, the (Purchaser) available to the (Purchaser), or at the request of the (Purchaser), to the Secretary of the federal (Purchaser) of Health and Human Services (HHS) or his/her designee, in a time and manner designated by the (Purchaser) or the Secretary or his/her designee, for the purpose of determining the (Purchaser's) compliance with the Privacy Rule. (Provider) shall promptly notify the (Purchaser) of communications with HHS regarding PHI provided by or created by the (Purchaser) and shall provide the (Purchaser) with copies of any information (Provider) has made available to HHS under this provision.

14. Term and Termination:

    a. This Agreement shall take effect upon execution.
    b. In addition to the rights of the parties established by the underlying Agreement, if the (Purchaser) reasonably determines in good faith that (Provider) has materially breached any of its obligations under this Agreement, the (Purchaser), in its sole discretion, shall have the right to:
        (i) exercise any of its rights to reports, access and inspection under this Agreement; and/or
        (ii) require (Provider) to submit to a plan of monitoring and reporting, as the (Purchaser) may determine necessary to maintain compliance with this Agreement; and/or
        (iii) provide (Provider) with a defined period to cure the breach; or
        (iv) terminate the Agreement in accordance with statutes

    c. Before exercising any of these options, the (Purchaser) shall provide written notice of preliminary determination to (Provider) describing the violation and the action it intends to take.

15. Return or Destruction of PHI: Upon termination, cancellation, expiration or other conclusion of the Agreement, (Provider) shall:

    a. Return to the (Purchaser) or, if return is not feasible, destroy all PHI and in whatever form or medium that (Provider) received or created on behalf of the (Purchaser). This provision shall also apply to all PHI that is in the possession of subcontractors or agents of (Provider). In such case, (Provider) shall retain no copies of such information, including any compilations derived from and allowing identification of PHI. (Provider) shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty- (30) day period, (Provider) shall certify on oath in writing to the (Purchaser) that such return or destruction has been completed.

    b. If (Provider) believes that the return or destruction of PHI is not feasible, (Provider) shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, (Provider) shall extend the protections of this

Agreement to PHI it receives or creates on behalf of the (Purchaser), and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the information infeasible, for so long as (Provider) maintains the PHI.

16. Miscellaneous:

a. Automatic Amendment: Upon the effective date of any amendment to the HIPAA rules, this Agreement shall automatically amend so that the obligations imposed on (Provider) remain in compliance with such regulations.
b. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the (Purchaser) to comply with the HIPAA Rules.
c. *[This paragraph is optional] (*Provider) shall submit to the (Purchaser) plans for compliance with the HIPAA rules along with periodic reports of progress of the plan implementation. The plans and progress reports shall be in the manner , form and timeframe determined by the (Purchaser).

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

(PURCHASER)	(PROVIDER)
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____